United Nations S/AC.44/2004/(02)/63

Security Council

Distr.: General
6 December 2004

Original: English

Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 1 November 2004 from the Permanent Mission of Turkey to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Turkey to the United Nations presents its compliments to the Chairman of the Committee and, with reference to the latter's note verbale dated 21 June 2004, has the honour to enclose herewith the national report of Turkey, prepared in accordance with paragraph 4 of Security Council resolution 1540 (2004) (see annex).

04-63781 (E) 161204

Annex to the note verbale dated 1 November 2004 from the Permanent Mission of Turkey to the United Nations addressed to the Chairman of the Committee

National report of Turkey to the Security Council Committee established pursuant to resolution 1540 (2004)

The steps taken by the Government of Turkey in implementing the provisions of operative paragraphs 1, 2 and 3 of the resolution 1540 (2004) of the Security Council are as follows:

1) In principle, Turkey favors global, overall disarmament. In view of this ideal, she supports all efforts in the field of sustaining international security through arms control, non-proliferation and disarmament.

Being close to regions posing high risks of proliferation, Turkey takes a firm stance against proliferation of WMD and their means of delivery. The basic precept in Turkey's armament and export policies is **zero tolerance for proliferation.**

In Turkey's view the first move in the international non-proliferation policies is to strengthen the legal framework and redefine and expand the basic parameters of the international instruments and export control regimes. Ensuring an effective implementation of these instruments and control regimes is another loophole to be reckoned with.

Turkey is party to all the instruments and regimes in the field of WMD proliferation and gives full support to the Proliferation Security Initiative.

In this context, Turkey became party to the **Treaty on Non-Proliferation of Nuclear Weapons** in 1979 and to the **Comprehensive Test Ban Treaty** in 2000. Turkey is also party to both the **Chemical Weapons Convention** since 1997 , the **Biological Weapons Convention** since 1974 and the **Comprehensive Nuclear test Ban Treaty** since 1999. In 1996, Turkey became the founding member of the **Wassenaar Arrangement** regarding export controls of conventional weapons and dual-use equipment and technologies. Turkey joined the **Missile Technology Control Regime** in 1997, the **Zangger Committee** in 1999, the **Nuclear Suppliers Group** and the **Australia Group** in 2000.

2. a) The new Turkish Criminal Code No:5237 which was adopted by the Turkish Grand National Assembly on 26 September 2004 constitutes the backbone of Turkey's counter-proliferation posture in the internal law. Articles 6, 172, 173 and 174 of the said code are relevant to weapons of mass destruction.

The definition of weapons in **Article 6** is inclusive of nuclear, radioactive, biological and chemical materials which can burn, abrade, perforate, injure, suffocate, poison, and cause permanent illness and disease.

Article 172 covers the act of "Diffusing of Radiation". According to this article "whoever subjects another person to radiation, with the intention to give damage to his/her health, shall be sentenced to imprisonment from three to fifteen years." The second paragraph of the article states further that if the criminal act defined in the first clause is committed against an indefinite number of persons; no less than five years imprisonment shall be adjudicated. The act of taking part in the diffusing of radiation and in the disintegration process of atomic nuclei

is also considered a punishable offence in paragraph 3, which states "whoever diffuses radiation or takes part in the disintegration process of atomic nuclei in a manner to give damage to another person's life, health or property to an important degree, shall be sentenced to imprisonment from two to five years." And finally, the fourth paragraph states "whoever, in disregard of his/her obligations to be careful and diligent, causes radioactive diffusion or disintegration of atomic nuclei during operations of a laboratory or a plant, shall be sentenced to imprisonment from six months to three years".

Article 173 covers the act of "Causing Explosion With Atomic Energy" This article considers the act of causing explosion by releasing atomic energy which disturbs the ecological balance for many years, in a manner endangering another's life, health or property to a significant degree, a punishable offence which shall be sentenced to imprisonment no less than five years. In cases where the act is committed with negligence, two to five years imprisonment sentence shall be adjudicated.

Under **Article 174** which bears the heading "Possessing and Exchanging Dangerous Materials without Permission" the act of causing proliferation of weapons of mass destruction and the materials used in their production is made a crime to be punished with severe penalties.

The first paragraph stipulates that the acts of producing, importing or exporting, transporting from one place to another in the country, keeping, selling, buying or processing radioactive, chemical, biological materials which are explosive, burning, abrasive, injuring, suffocating, poisonous, causing permanent illness in nature, without the permission of competent authorities, constitute a punishable criminal offence and shall be sentenced to imprisonment from three to eight years and to fines for up to 5000 days.

It further stresses that the act of exporting the substances and equipment needed in the production, operation or utilization of the materials which are in the scope of this article, without the permission of the competent authorities, also constitutes a punishable crime and shall be sentenced to the same penalty. This is inclusive of unlicensed exportation of dual-use items.

Second paragraph focuses on the organized nature of the crime and states that if these acts are committed in the context of an organized crime by an organization which has been formed for performing criminal acts, the penalty to be imposed shall be increased by half.

b) A subsidiary legislation in the field of counterproliferation is the **'Law on Control of the Private Industrial Enterprises Producing War Weapons, Equipment, Vehicles, Ammunition and Explosives" (Law No:5201)**. Adopted by the Parliament on 04 July 2004, in replacement of the former Law No: 6136, this law renews the mandate of the Ministry of National Defense (MND) as the licensing body for the export of almost all weapons and ammunition. The MND issues every year a list of all weapons, ammunition, explosive materials and their parts, which are subject to licensing. Nuclear, chemical and biological weapons, their parts and means of delivery are also considered within the framework of this law. Article 8 of this legislation clearly defines the act of establishing and managing enterprises which produce weapons, ammunition and explosives without the permission of the MND as a punishable crime for which two months to one year imprisonment sentence shall be adjudicated together with a heavy fine. The same article further stipulates that functioning licenced enterprises which fail to comply with their obligation to notify the MND regarding their stocks, related firm details and information on the orders they receive shall be sentenced to

imprisonment from one month to six months period together with a heavy fine. The said article also states that one to five years imprisonment sentence shall be adjudicated for those who illegally export materials and parts for which licence is required from the MND. In addition, the MND reserves the right to apply to the Court of Justice with request for closure of enterprises that are deemed to be unfit for functioning in this sector.

c) In view of its obligation under Article 7 of the Convention on Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC), Turkey is on the way to have its national legislation which will penalize natural and legal persons involved in any activity prohibited by the said Convention. Once the draft bill gains the force of law, it will further enhance the legal capacity of the state to deal with WMD proliferation.

3. a) With a view to fulfilling the provisions of international non-proliferation instruments and arrangements to which Turkey is party, an enhanced system of export controls is implemented in Turkey. The Turkish export control system is in line with the standards of the European Union. The applications for export is evaluated in accordance with the UN and OSCE embargo lists as well as the EU embargo decisions which Turkey aligns herself with. The control lists of the international instruments against proliferation of weapons of mass destruction or export control regimes that Turkey is a party to, are also taken into consideration.

b) In cases where the export of sensitive and dual-use materials which are covered by international instruments and export control regimes is involved, the exporting process is controlled by virtue of a two-tier mechanism that involves separate processes of:

- licensing by the relevant national institution (MND, Turkish Atomic Energy Agency (TAEK), Ministry of Health, Ministry of Industry and Commerce, etc...)

- registration by the Undersecretariat for Foreign Trade (UFT).

Following the issuing of a licence by the relevant national institution, as the second tier, it is the duty of the UFT to take all monitoring, control, arrangement and orientation measures regarding exports and to draft the general export policy of Turkey. In fulfilling its duties, the UFT avails itself of the 13 exporters' unions located around the country.

Istanbul Metals and Minerals Exporters' Union (IMMIB), as the nominated coordinating union, is responsible for the implementation of the general export policy, under the auspices of the UFT. All exporters are required to be a member of an exporters' union in order to be able to export any good or material. Sensitive goods, technologies and dual-use materials are registered by IMMIB which denotes this registration on the customs declaration. This mechanism enables a centralized monitoring of the export of sensitive goods, technologies and dual-use materials on the basis of exporting company, product, quantity and value. IMMIB determines whether or not the good to be exported is subject to export controls. If so, then this export is submitted to the procedure described above, where permissions from relevant national institutions are sought.

c) Regarding the control of dual-use items and technology (which can be used in the production of weapons of mass destruction, but not included in the control lists of any non-proliferation instrument or export control regime), the "catch-all" legislation is also finalized and incorporated into the export control regime of Turkey. According to the "catch-all" legislation;

the export of dual-use items which can be used in the production of weapons of mass destruction, but not included in the Wassenaar Arrangement Dual-Use Items and Technology Lists and Australia Group Chemical Procursors Lists, are subject to the permission of the Undersecretariat for Foreign Trade (UFT) if the conditions stated below are present:

a) In case of a suspicion that the end-user is developing weapons of mass destruction;

b) If the exporter company declares its suspicion that the whole material or any part of it will be used in developing weapons of mass destruction;

c) In situations that may cause human rights violations.

The MND has also made its own "catch-all" arrangement in the framework of the Law Number 5201 mentioned above. TAEK is also on the way to make its own "catch-all" arrangement.

d) As part of her efforts for enforcing effective measures to establish more domestic control in the ports and customs, Turkey has adopted the International Ship and Port Facilities Security Code (ISPS) initiated by the International Maritime Organization (IMO). The ISPS is being applied in almost all ports since 1 July 2004 by the joint effort of the Turkish Maritime Undersecretariat for Maritime Affairs and the Undersecretariat for Customs. On the other hand, the Turkish customs are working in an automated environment since 2001, which means that 99% of the data are saved and processed in a computerized network. Security at the customs have also been enhanced by the installation of advanced X-ray equipment at three customs points. The installation of the X-ray devices, which enables customs officials to check all sizes of vehicles, their parts and shipment in the containers, have improved the national capability for detecting illegal materials and substances. Thus this step has strengthened the security measures taken in respect of the proliferation of nuclear, biological and chemical weapons and their means of delivery.

4) In line with her general stance against proliferation of WMD, Turkey has also declared her support to the Proliferation Security Initiative (PSI) which was launched by the President of the USA during a speech in Krakow, Poland, in May 2003. Recognizing that the PSI aims to build on wider efforts by the international community to prevent the proliferation of WMD, including through existing treaties and regimes, Turkey is following the activities of PSI, including the interdiction training exercises, while at the same time making an assessment on what kind of capabilities it can assign to future activities, in particular to those that will take place in Turkey's neighborhood.